IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4044 OF 2005

M/s.Narayana Guru Co-operative Housing
Society Ltd. : Petitioner

V/s.

The Divisional Joint Registrar, Co-op.
Societies & Ors. : Respondents

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Mr.N.N. Bhadrashete for the petitioner.

Mr.S.R.Nandgaonkar for the respondent no.3.

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CORAM : S.A. BOBDE, J.

August 23, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Nandgaonkar, learned counsel, appears and waives service of rule on behalf of the respondent no.3.

Heard by consent.

2. The petitioner-society has challenged the order dated 4.5.2005 passed by the Divisional Joint Registrar, Co-op.

Societies, Mumbai Division, in revision by which the certificate in the petitioner favour under section 101 of the Maharashtra Co-operative Societies Act, 1960, hereinafter referred to as the "Act", has been set aside.

3. The only ground on which the certificate has been set aside is that the Divisional Joint Registrar came to the conclusion that the respondent-member of the society has spent an amount of Rs.21,125/- for carrying out repairs in order to set right the leakage in his flat and the society has wrongly turned down his claim. The only question is whether the revisional authority was entitled in law to pass such an order.

4. Having heard the learned counsel for both the sides, I am of view that while deciding a revision under section 154 of the Act against a recovery certificate obtained by a society under section 101, the Registrar has no jurisdiction to pass such an order.

5. The brief facts are that on an application made by the society under section 101 of the Act, the Registrar granted a certificate in the sum of Rs.17,027/-, including expenses. Admittedly, it appears from this order that the respondent had made a counter-claim on the ground that he

had repaired his flat and had incurred expenses of Rs.21,125/- and the society had not reimbursed those expenses. This plea was turned down and, in my view, rightly, by the Deputy Registrar as not relevant to the claim made by the society. The Deputy Registrar observed that the respondent no.3 could have made a separate application for reimbursement.

6. The respondent no.3 carried the matter in revision before the Divisional Joint Registrar with whom his arguments seem to have found favour. He contended that the society has acted vindictively against him, that members of the Managing Committee had socially boycotted him, that therefore, he be reimbursed with a sum of Rs.21,125/- payable to him for having carried out repair works on an emergency basis to avoid further seepage by employing contractors.

7. The Divisional Joint Registrar has, without any evidence, except the bare word of the respondent no.3, accepted his claim and observed that he is entitled to reimbursement in the sum of Rs.21,125/- spent by him for carrying out repairs to stop the leakage. The Divisional Joint Registrar held that the society was not justified in turning down his claim.

8. I am of view that the order of the Divisional Joint Registrar is wholly without jurisdiction in view of the Legislative intent of section 101 of the Act. This section is enacted in order to enable the society to recover the dues from its members. Section 101 reads as follows:-

> **"101. Recovery of arrears due to certain societies as arrears of land revenue**.--(1) Notwithstanding anything contained in section 91, 93 and 98, on an application made by a resource society undertaking the financing of crop and seasonal finance as defined under the Bombay Agricultural Debtors Relief Act, 1947, or advancing loans for other agricultural purposes repaying during a period of not less than eighteen months and not more than five years for the recovery of arrears of any sum advanced by it to any of its members on account of the financing of crop or seasonal finance or for other agricultural purposes as aforesaid or by a crop-protection society for the recovery of the arrears of the initial cost or of any

contribution for obtaining services required for crop-protection which may be due from its members or other owners of lands included in the proposal (who may have refused to become members) or by a lift irrigation society for the recovery of arrears of any subscription due from its members for obtaining services required for providing water supply to them, or by a Taluka or Block level village artisans multi-purpose society advancing loans and arranging for cash credit facilities for artisans for the recovery of arrears of its dues, or by a co-operative housing society for the recovery of arrears of its dues, or by a co-operative dairy society advancing loans for the recovery of arrears of any sum advanced by it to any of its members or by an urban co-operative bank for the recovery of arrears of its dues, or by salary-earners co-operative society for the recovery of arrears of its dues, or by a fisheries co-operative society for the recovery of arrears of its dues), or by any such society or class of societies, as the State Government may, from time to time,

notify in the Official Gazette, for the recovery of any sum advanced to, or any subscription or any other amount due from, the members of the society or class of societies so notified; and on the society concerned furnishing a statement of accounts in respect of the arrears, the Registrar may, after making such inquiries as he deems fit, grant certificate for the recovery of the amount stated therein, to be due as arrears:

Explanation.- For the purposes of this sub-section, the expression "other agricultural purposes" includes dairy, pisciculture and poultry).

(2) Where the Registrar is satisfied that the concerned society has failed to take action under the foregoing sub-section in respect of any amount due as arrears, the Registrar may, of his motion, after making such inquiries as he deems fit, grant a certificate for the recovery of the amount stated therein, to be due as arrears and such a certificate shall be deemed to have been issued as if on an

application made by the society concerned.

(3) A certificate granted by the Registrar under sub-section (1) or (2) shall be final and a conclusive proof of the arrears stated to be due therein, and the same shall be recoverable according to the law for the time being in force, for the recovery of land revenue.

(4) It shall be lawful for the Collector and the Registrar to take precautionary measures authorised by Sections 140 to 144 of the Bombay Land Revenue Code, 1879 or any law or provisions corresponding thereto for the time being in force, until the arrears due to the concerned society, together with interest and any incidental charges incurred in the recovery of such arrears, are paid, or security for payment of such arrears is furnished to the satisfaction of the Registrar."

There is no provision made for enabling a member to make a counter-claim.

9. It must follow, therefore, that there is no jurisdiction in a revisional authority which entertains the revision against the grant of a certificate to make an order which could not have been made by the revisional authority under section 101 of the said Act. Section 154, to the extent relevant, reads as follows:-

> **"154. Revisionary powers of State Government and Registrar**.--The State Government or the Registrar, suo motu or on an application, may call for and examine the record of any inquiry or proceedings of any matter, other than those 'referred to in sub-section (9) of section 149, where any decision or order has been passed by any subordinate officer, and no appeal lies against such decision or order, for the purpose of satisfying themselves as to the legality or propriety of any such decision or order, and as to the regularity of such proceedings, if in any case, it appears to the State Government, or the Registrar, that any decision or order so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may

be, may, after giving the person affected thereby an opportunity of being heard, pass such orders thereon as to it or him may seem just.

(2) Under this section, the revision shall lie to the State Government if the decision or order is passed by the Registrar, the Additional Registrar or a Joint Registrar, and to the Registrar if passed by any other officer.

(2A) .....

(3) No application for revision shall be entertained, if made after two months of the date of communication of the decision or order. The revisional authority may entertain any such application made after such period, if the applicant satisfies it that he had sufficient cause for not making the application within such period."

There is undoubtedly a power to modify, annul or reverse the certificate under section 101, but the revisional

authority cannot grant a counter-claim as has been done in the present case. This is not to say that the revisional authority is not entitled to examine the account and reduce the amount of the certificate by the amount which a member is found to have paid to the society.

10. In this view of the matter, the impugned order is wholly without jurisdiction and is liable to be set aside. The rule is made absolute in the above terms. This order shall not prevent the respondent no.3 from making any claim which he may have against the society before appropriate forum, in accordance with law.

S.A. BOBDE, J.